
(2021) 01 KL CK 0289

In the High Court Of Kerala

Case No : Writ Petition (C) No. 26240 Of 2020

Neethi O.T

APPELLANT

Vs

State Of Kerala And Ors

RESPONDENT

Date of Decision : 11-01-2021

Acts Referred:

Citation : (2021) 01 KL CK 0289

Hon'ble Judges : Anu Sivaraman, J

Bench : Single Bench

Advocate : Murali Pallath, Nisha Bose

Judgement

1. This writ petition is filed seeking the following prayers:

â??(i) a writ of certiorari calling for records leading to Ext.P3, Ext.P4, Ext.P6 and set aside Ext.P3 and Ext.P4 to the extent to which they say that

the petitioner is not eligible for full time benefit during 2019-20 and set aside Ext.P6

(ii) Orders declaring that the petitioner is entitled for full time benefit for the year 2019-20 also.

(iii) Orders declaring that no recovery is permissible from the petitioner on refixation of pay while granting the full time benefit w.e.f. 01.06.2003 on revision cancelling the full time benefit already granted w.e.f. 21.11.2002.

(iv) Orders declaring the petitioner is eligible for reoption for 2004 pay revision, 2009 pay revision and higher grade also while refixing her pay with retrospective effect.

(v) Orders directing the 4th and 6th respondents to disburse salary due to the petitioner from July, 2019 onwards.â??

2. Heard the learned counsel for the petitioner and the learned Government

Pleader.

3. It is submitted by the learned counsel for the petitioner that the petitioner was appointed as Part Time Hindi Teacher on 01.06.1998 and that she

had been granted full time benefit with effect from 22.01.2002 on completion of 5 years of service. It is submitted that when one post of UPSA stood

abolished in the year 2019-20, the disbursal of salary to the petitioner was sought to be discontinued. Ext.P5 order was passed on 19.08.2020 by the

DPI directing that since the petitioner had been granted full time benefit from 22.01.2002, her status as a full time teacher should be continued on

clubbing arrangement. It is submitted that thereafter, Ext.P6 order was passed by the 4th respondent stating that the benefit can be granted only after

the school reopen.

4. The learned counsel for the petitioner further submits that on approaching the Government and on the basis of interim orders passed, the petitioner

had been getting her salary till December, 2020. It is submitted that even if it is found that the prior broken service is not liable to be counted, no

recovery is liable to be effected against the petitioner in view of the fact that the petitioner is only a primary school teacher and had no role in the

alleged mistake and in the light of the decision of the Apex Court in State of Punjab and Others v. Rafiq Masih (White Washer) and Others [(2015) 4

SCC 334].

5. The learned Government Pleader submits that Ext.P5 direction of the DPI will be implemented as soon as the school reopen. With regard to the

refixation of the pay, it is submitted that the petitioner can approach the Government and the issue will be considered, taking note of the binding

decisions of the Apex Court as well.

6. Having considered the contentions advanced on either side, I am of the opinion that the question with regard to the grant of the full time benefit to

the petitioner and the refixation of pay are liable to be considered by the Government, taking note of the principles enunciated by the Apex Court in

Rafiq Masih (White Washer)'s case (cited supra).

7. In the above view of the matter, in case the petitioner approaches the 1st respondent with an appropriate representation, the same shall be

considered, taking note of the directions of the Apex Court as well. The directions contained in Ext.P5 shall also be considered and appropriate action

shall be taken in accordance with law. The steps for refixation of pay shall be kept in abeyance until the Government considers the representation to

be preferred by the petitioner. It is further made clear that the petitioner shall be continued to be paid salary as has been done pursuant to the interim

order of this Court dated 27.11.2020 till an appropriate decision is taken by the Government in this regard. Appropriate orders shall be passed by the

Government after hearing the petitioner as well as the Manager through any appropriate means including by video conferencing within a period of

three months from the date of receipt of a copy of this judgment.

This writ petition is ordered accordingly.